

Montana Department of  
Public Health & Human Services

Section:

**Serving the Family**

**CHILD CARE**

Subject:

**Legally Unregistered Providers**

**Medication Administration**

**References:**      **Reference: MCA 52-2-736; 37-7-101; 50-19-701; 37-2-101; 45-2-101; standard definition arising from CARING for OUR CHILDREN, page 489. Proposed definition in 37.95.102, ARM**

**Background  
Information**

Effective October 1, 2005 a new law was enacted regarding the administration of medication in child care facilities. Because legally unregistered providers (LUP/LUI) receive payment from the state to care for children, it was determined that the law also applies to them. This law was motivated by the tragic death of an infant, Dane Heggem after he inappropriately received medication at a child care facility. The law is known as “Dane’s Law” (MCA 52-2-736) and includes penalties for inappropriate administration of medication to a child in care, as well as, provisions for parents to approve administration of medication by a child care provider to their child.

**Definitions:**

**Medicine** means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

**Emergency Services provider** means a person employed by or acting as a volunteer, with an emergency services organization, including but not limited to a law enforcement officer firefighter, emergency medical technician, paramedic, corrections officer or ambulance service attendant.

**Medical practitioner** means any person licensed by the State of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry or nursing specialty and in the licensed practice to administer or prescribe drugs.

**Bodily injury** means physical pain, illness or an impairment of physical condition and includes mental illness or impairment

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**Serious bodily injury** means bodily injury that creates a substantial risk of death; causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ. The term includes serious mental illness or impairment.

**Non-prescription** means any over the counter medication that is not specifically prescribed by a physician, but is recommended by a health care provider or a parent or guardian for a specific child.

### Medication Administration Policy

Administering medication to children in care without written consent of the child's parent or legal guardian is illegal. A LUP/LUI provider cannot administer medication, either prescription or non-prescription unless they have written consent of the parent or guardian.

Administering medication without parental or legal guardian consent is allowed in the following circumstance:

- A medical practitioner emergency services provider or 9-1-1 responder verbally directs the LUP/LUI provider to administer a specific medication. The child is then transported to a health care facility or medical practitioner for follow-up care within a reasonable time:
  - By the child's parents or legal guardian,
  - By the LUP/LUI provider (with permission from parents or legal guardian to transport), or
  - Emergency services provider.

### Forms needed by parent and provider:

### FORMS

Prior to the provider administering medication, the parent or legal guardian

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## REQUIRED

must fill out the *Medication Authorization Form* (HCS/CC-089). This form needs to be filled out for each medication for each child prior to administering the medication, either prescription or non-prescription. This form must also be kept on file for three years.

Once the provider has administered the medication either prescription or non-prescription the provider must fill out a *Medication Administration Log* (HCS/CC-090). This form must be kept on file for three years. A Medication Log form must be filled out for each medication for each period of time. (**For Example:** A child is prescribed a medication for an ear infection for 10 days. Once the child is done with this prescription that is one occurrence. Then two weeks later the child is prescribed the same prescription, a new, separate Log needs to be filled out.)

If a provider administers a medication inappropriately or under any other unusual circumstance they must complete a *Medication Error/Incident Report* (HCS/CC-091) and also make a note of the occurrence in the comment section of the log. The provider must notify the parent or legal guardian of the incident immediately.

If the provider is administering non-ingestible Over-the-Counter (OTC's) they need to use the *Over-the-Counter Medication Authorization form* (HCS/CC-092).

## Medication Administration Attestation:

A LUP/LUI provider and parent or legal guardian are required to sign the *Medication Administration Attestation* (HCS/CC-088) stating the provider agrees to follow the procedures for Medication Administration. This form is part of the application process. Failure to sign this form will result in a denial of the application. At renewal the attestation is required to be signed by the provider and parent or legal guardian as part of the renewal application process.

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**PENALTY**

Violation of this policy is subject to penalty under Danes Law (52-2-736, MCA). This law defines the penalties that occur if a provider fails to secure parental permission for administration of medications, prescription or non-prescription. The penalty as defined in MCA 52-2-736 (4) (a) and (4) (b): A person convicted of purposely or knowingly administering medicine without authorization resulting in bodily injury to a child shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both. A person convicted of purposely or knowingly administering medicine without authorization resulting in serious bodily injury to a child or in the death of a child shall be imprisoned for a term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.